

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SAMANTHA GROME,

Plaintiff,

vs.

USAA SAVINGS BANK,

Defendant.

Case No. 4:19-cv-03080

DEFENDANT USAA SAVINGS BANK'S MOTION SUMMARY JUDGMENT

Prepared and Submitted By:

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TO THE HONORABLE COURT:

Pursuant to Federal R. Civ. P. 56, Defendant USAA Savings Bank (“**USAA SB**”), moves the Court to enter an Order granting summary judgment in favor of USAA SB on Plaintiff Samantha Grome’s (“**Plaintiff**”) claim under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)(iii) (“TCPA”).

Plaintiff’s Complaint alleges that USAA SB violated the TCPA by making telephone calls to Plaintiff’s cellular telephone, without Plaintiff’s prior express consent, using an “automatic telephone dialing system” (“**ATDS**”). Plaintiff’s TCPA claim fails because USAA SB did not use an ATDS to make the calls, as the dialing equipment does not have the capacity to store or produce telephone numbers to be called using a random or sequential number generator 47 U.S.C. § 227(a)(1); *Facebook, Inc. v. Duguid*, No. 19-511, 2021 U.S. LEXIS 1742 (2021).

Accordingly, USAA SB respectfully requests the Court grant this Motion for Summary Judgment and enter judgment in USAA SB’s favor on Plaintiff’s claims. An accompanying Supporting Brief will be filed and served together with this Motion in accordance with Local Rule 7.1.

Dated this 10th day of May, 2021.

USAA SAVINGS BANK, Defendant

By /s/ David M. Krueger

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered participants.

/s/ David M. Krueger

Counsel for Defendant USAA Federal
Savings Bank